

General Information Letter. Voluntary disclosure of a liability by a qualifying taxpayer is grounds for a shortened statute of limitations for assessment of tax under UPIA Section 3-10(c).

March 24, 2008

Dear:

This is in response to your letter dated January 21, 2008 in which you request acceptance into the voluntary disclosure program. The nature of your request and the information provided requires that we respond with a general information letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be accessed from the Department's web site at www.Iltax.com.

Your letter states as follows:

I am writing to request a letter of ruling to confirm if nexus exists for corporate/partnership tax purposes for a client ('the company'), I represent. I request acceptance into the Nexus Voluntary Disclosure program for corporate/partnership income tax purposes based on significant information as stated below.

Tax type of the company, date began business in state and Year End

The 'company' is a Single Member Limited Liability Company. The sole member of the 'company' is a Limited Liability Company and is treated as a Partnership for federal income tax purposes. The 'company' was formed on June 5, 2003 and began doing business in your state as of that date. The 'company' has a year end of December 31st.

Activities of the company that created Nexus

The primary business of the company is printer and software sales which support companies in managing controlled-printing processes. Each product is sold separately. Software purchased is either downloaded by the customer or shipped.

The secondary business of the company is sales of self-service financial kiosks and software that automate customer interactions.

Maintenance contracts for these items may be purchased by the customer. These contracts are "as needed" and therefore, there is no maintenance schedule. Any services required under these contracts are performed by a third party vendor.

All sales solicitations made by the 'company' are made by telephone from outside the state.

Assets and Payroll within the state

The company does not maintain any inventory, offices nor do they employ any staff within the state.

Compliance with other types of Taxes

For retail sales, any and all sales taxes have been collected timely and submitted to the appropriate tax agency in your state since the 'company' began doing business. The 'company' has obtained and maintains all necessary licenses for various municipalities within your state.

Notice from your state regarding failure to comply or audit request

The 'company' has not received any prior notice from your state requesting income taxes or stating the company may be subject to such under your Nexus rules.

Reason for not filing taxes at the Corporate tax level

The 'company' did not file taxes with your state in the past because it was not obvious certain present business activities would create a tax responsibility at a corporate state level. Upon acceptance into the voluntary disclosure program, the company will file all necessary returns including Partnership Income Tax Returns as requested by your office.

Requests for abatement of penalties and interest

The 'company' requests abatement of penalties and related interest for the tax periods not filed.

Additional Requests

Upon review of this information please forward appropriate documents with guidelines on the steps necessary to complete the nexus process. Please include, if possible, any information relating to which company will be required to report to your agency for income tax purposes. In other words, will the Single Member Limited Liability Company or the Member Limited Liability Company be required to file?

RULING

Section 201(a) of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/201) imposes the Illinois income tax upon every individual, corporation, trust and estate on the privilege of earning or receiving income in or as a resident of Illinois. In addition, IITA Section 201(c) imposes the Personal Property Tax Replacement Income Tax on every corporation (including Subchapter S corporation), partnership and trust for the privilege of earning or receiving income in or as a resident of Illinois. Under the IITA, entity classification rules follow the rules for federal income tax purposes under the Internal Revenue Code. Thus, for example, an LLC classified as corporation for federal income tax purposes is a corporation for purposes of the IITA, while an LLC that is disregarded as an entity for federal income tax purposes is likewise disregarded for Illinois income tax purposes. See Department Regulations §100.9750 (86 Ill. Adm. Code 100.9750). In your case, if the single-member LLC is treated as a corporation for federal income tax purposes, it would be subject to any applicable Illinois income tax liability and required to file the requisite Illinois income tax returns. On the other hand, if the single-member LLC is disregarded for federal income tax purposes, then all of its assets, liabilities, and tax items would be treated as the assets, liabilities, and tax items of the member partnership for Illinois income tax purposes.

The determination of whether a taxpayer has nexus with Illinois is extremely fact-specific. Therefore, the Department does not issue rulings regarding whether a taxpayer has nexus with the State. However, for information regarding nexus with Illinois see Department Regulations §100.9720 (86 Ill. Adm. Code 100.9720).

Section 3-10(c) of the Uniform Penalty and Interest Act ("UPIA" ; 35 ILCS 735/3-10) provides that in the case of a failure to file a return that is voluntarily disclosed, in accordance with regulations promulgated by the Department for receiving the voluntary disclosure, tax may be assessed no more than 4 years after the original due date of each return required to have been filed. Department regulations require that to be eligible for the 4-year limitations period, a taxpayer must voluntarily come forward and disclose its tax liability to the Board of Appeals. 86 Ill. Adm. Code § 210.126(b). In order to satisfy such disclosure requirement, a taxpayer must file with the Board returns for the tax being disclosed for the last four years and pay all tax, penalty and interest due within 30 days from the date the taxpayer's disclosure application is accepted. In addition, a taxpayer's determination of its tax liability, including the methodology used to compute such liability, must be documented in a manner reviewable by the Department. 86 Ill. Adm. Code § 210.126(b)(2). Finally, a taxpayer will not be eligible for the relief provided under voluntary disclosure where the Department determines that the taxpayer has understated its tax liability to the Board by 10% or more and has failed to make a good faith effort to accurately report its liability for the voluntary disclosure period. The Department maintains the right to audit all open years within the voluntary disclosure period. 86 Ill. Adm. Code § 210.126(e).

For your convenience, please find enclosed copies of the regulations referred to above, as well as Form BOA-2 Application for Voluntary Disclosure.

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you have further questions regarding this GIL, please call (217) 782-7055. If you have additional questions regarding Illinois income tax laws, please visit the Department's web site at www.ILtax.com.

Sincerely,

Brian L. Stocker
Associate Counsel (Income Tax)